

PROVING COMPENSATORY DAMAGES THROUGH LAY WITNESSES

PRESENTED BY

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The ability to prove compensatory damages for emotional distress often lies at the ability to tug at the heartstrings of the trier of fact. The trier of fact, whether judge or jury, must be convinced that your client has suffered emotionally due to the discriminatory or retaliatory actions of the defendant. All too often, the defense has a knee-jerk reaction to the evidence showing the causal connection between the defendant's acts and the emotional distress, and to the severity of the emotional distress. That knee-jerk reaction is to understate the weight or value of nonmedical evidence. That could be a costly mistake. Think about it logically. Who is in the best position to know your client best? Who is in the position to closely observe your client's behavior, changes in levels of functioning, changes in moods, changes in activities? Who is in the best position to observe those changes with greater frequency? The answer is quite simple. It's not the treating health care professionals who will see your client on an irregular, or infrequent basis, and base their reports on what the client tells them rather than what they observed. And similarly, it is not the expert witness who has evaluated your client over a short period of time. Obviously, these witnesses can be important to establish diagnoses, symptoms and causality. However, the answer to the question of who is in the best position to observe the effects of the

defendant's discrimination on your client is the people who know your client the best and see your client most often: friends, family and coworkers.

The US Equal Employment Opportunity Commission has held that evidence from a health care provider is not a prerequisite for recovery of compensatory damages. *See Carpenter v. Department of Agriculture*, EEOC Appeal No. 01945652 (July 17, 1995),¹ in which the EEOC noted that courts also have held that 'expert testimony ordinarily is not required to ground money damages for mental anguish or emotional distress. *citing* Wulf v. City of Wichita, 883 F.2d 842, 875 (10th Cir. 1989). A complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his/her burden in this regard.

Other circuits are in accord, for example, *see*:

***DeCorte v. Jordan*, 497 F.3d 433 (5th Cir. 2007):**

Corroborating testimony and medical evidence is not required in every case involving compensatory damages.

***Pickett v. Sheridan Health Care Center*, 610 F.3d 434 (7th Cir. 2010):**

[The employer's] position that [the employee] could not have established emotional distress without corroborating evidence from a third party finds no support in our precedent. *See Tullis v. Townley Eng'g & Mfg. Co.*, 243 F.3d 1058, 1068 (7th Cir.2001) ("[A]n award for nonpecuniary loss can be supported, in certain circumstances, solely by a plaintiff's testimony about his or her emotional distress."); *see also Deloughery v. City*

¹ The EEOC adjudicates discrimination claims brought by federal employees. *See generally* 29 CFR Part 1614.

of *Chicago*, 422 F.3d 611, 620 n. 5 (7th Cir.2005) (noting that a jury is entitled to conclude that plaintiff need not consult a mental health professional to establish emotional distress); *Merriweather v. Family Dollar Stores, Inc.*, 103 F.3d 576, 580-81 (7th Cir.1996) (holding that plaintiff's testimony alone may support an award for emotional distress).

***Heaton v. The Weitz Co.*, 534 F.3d 882 (8th Cir. 2008):**

[P]laintiff's own testimony can be sufficient for finding of emotional distress and medical evidence is not necessary, but plaintiff must offer specific facts as to nature of his claimed emotional distress and causal connection to employer's alleged violations.

Yet, defense counsel tend to "poo-poo" these lay witnesses. Oftentimes, although these lay witnesses are identified in response to defendant's interrogatories, as individuals with knowledge of the plaintiff's suffering, the defense does not even bother to note their depositions. As a consequence, the defense may go into trial or hearing not knowing what these lay witnesses will testify to, and are surprised by the content, sincerity, and credibility of their testimony. That's their mistake. Your mistake would be to similarly undervalue the use of the lay witness to prove emotional distress damages and to not have them prepared as an essential part of your case in chief.

In Charles Dickens' *A Tale of Two Cities*, the famed author starts out:

It was the best of times,
it was the worst of times,

it was the age of wisdom,
it was the age of foolishness,
it was the epoch of belief,
it was the epoch of incredulity,
it was the season of Light,
it was the season of Darkness,
it was the spring of hope,
it was the winter of despair,

In proving a case for compensatory damages for emotional distress, your task is to be the Charles Dickens to your client. Your case is about contrasts. Through testimony, using lay witnesses effectively, your job is to paint two different pictures of your plaintiff. The first picture you should paint is what your client's life was like *before* the bad acts of the defendant. The second picture you paint is what your client's life is like (or *was* like if there has been improvement) *after* the bad acts of the defendant.

There are many different aspects of your client's life to examine. One obvious place, is the workplace. There are different aspects of your client's "life" at work to look at. What first comes to mind are your client's work habits and job performance. Often, work habits change after an act of discrimination and job performance will suffer. Work habits, as opposed to job performance, may be more amenable to testimony from coworkers. (Coworkers may not be in the best position to assess job performance and/or may not be viewed as credible against the testimony of your client's supervisors who are tasked with evaluation employee performance). For example, coworkers can testify as to what were your client's habits with respect to coming to work on time, level of participation in group meetings, personality traits, pleasantness with respect to how work assignments were received, etc. Coworkers can testify about what your client was like at work before the discrimination and then contrast that with what your client was

like after the discrimination. Has the formerly pleasant, cheerful employee [your client] become grumpy? Has the employee who always contributed in staff meetings or group projects now become quiet and withdrawn? These are areas to explore.

But it can also be the seemingly "little" or "trivial" little things that tell the real story. For example, in every office there is that one person who always goes out of his or her way to reach out to the new employees and make them feel welcomed. Each office has its "birthday cake" person. You know who I am talking about: the person who makes sure that everyone's birthday is celebrated, takes up the collection to buy the car and the birthday cake. What if your client is that person? Imagine the dramatic change in your client's personality that will be described when one of his or her own coworkers testifies about your client being that once reliable "birthday cake" person who has now been transformed into a coworker who is withdrawn, unsociable, and does not even partake in the birthday celebrations. This may sound frivolous, but, as part of a larger narrative, paints a picture of an individual who, after the defendant's bad acts, has a dramatic, negative, change in personality.

Defense counsel often focuses on plaintiff's changes in the work place. And clearly, as my example above indicated, changes in the workplace can be important in demonstrating emotional distress. But there is much fodder in examining your client's life off the job to demonstrate how severely he or she has been impacted by the workplace discrimination. Start by focusing on what your client's daily routines were at home prior to the discrimination. Get a good description from the client's spouse, parent, partners, children, and whoever else may have been in daily or frequent contact with your client in the home. Some of this will center on the mundane tasks of

upkeep: cooking, cleaning, bed-time habits, and sartorial interests. Have your witness describe your client's habits and interests in ordinary tasks around the home prior to the discrimination, then contrasts that posed the discrimination. Examine the testimony, attached to this paper, from a case involving a retaliatory performance appraisal followed by a retaliatory firing. The witness was our client's son.

This testimony painted a dramatic picture, of what the client was like before and after the retaliatory firing. The son was able to discuss changes in our client's personality, the affects that had on the family relationships, the client's changed behaviors and loss of enjoyment in activities in which she used to love, such as cooking and gardening, and changes in her socialization with others. She even started ignoring the family dog! In addition to the son, the husband also testified about the client's loss of enjoyment of activities. The son's testimony painted two pictures of his mother, our client, far better than any mental health practitioner ever could. In this case, there was no medical or psychological testimony, and while the award of compensatory damages was not huge, it was in the multiple tens of thousands of dollars and added to the client's sense of vindication after her firing was ruled retaliatory and she was ordered to be reinstated.

In addition to your client's habits and rituals in the home, much is to be gained by examining your client's activities outside of the house. For example, what was the client's activities with respect to: participating in sporting events (was your client a prototypical bowling team member?), dinner with friends, going to the theater, participating in church social and fundraising events, even shopping! All of the myriad of activities that most people do on a daily

weekly or monthly basis that we take for granted can all be affected by acts of discrimination and retaliation. Painting a picture before to the trier of fact of your client's level of participation and enjoyment in these activities before the discrimination, and contrasting that with the level of participation and enjoyment in these activities after that the discrimination provide objective measures of compensatory damages.

Consider the following real testimony in a failure to accommodate, HWE and retaliation case before the EEOC; the witness was my client's "best friend":

Q. Would you describe, based on your observations of Ms. XXX, what her personality was like before 2005.

A. She was energetic, enthusiastic, a lover of animals, lover of life, fun loving, funny, just a wonderful person to be around.

Q. How would you describe Ms. XXX's outlook -- general outlook on life before 2005?

A. Was that before 2005?

Q. Yes. Before 2005.

A. She enjoyed life and looked forward to each day. She would call me and tell me that she had gotten up at 4:00 o'clock in the morning, just eager to start the day, feeding her animals, getting ready to do her animal jobs, getting ready to go to work.

Q. How would you describe Ms. XXX prior to 2005 in terms of her wanting to socialize, that sort of thing?

A. She was always very eager to socialize. We would have potlucks. We would go out to dinner together. She hosted a yearly event that she called her green chile party and would invite friends over, and it was just a good time had by all.

Q. What, if any, hobbies did you observe Ms. XXX participating in prior to 2005?

- A. She was an avid hiker. She was an avid fisherman -- fisherwoman I guess would be the term. She absolutely loved her artwork, just did that very enthusiastically.

Now, see excerpts from the same witness's testimony about the client after the discriminatory acts of 2005:

- Q. After the beginning of 2005, describe Ms. XXX's personality.
- A. She began to show signs of being depressed, being angry, fearful, just had a negative overall outlook on life.
- Q. Fearful of what?
- A. Fearful of going to work every day. She had been threatened in her workplace and felt that the threats were not taken seriously.
- Q. How would you describe Ms. XXX's general outlook on life after the beginning of 2005?
- A. The woman that -- that once was very eager to get up in the morning and start her day was no longer. She was tired. She didn't want to socialize anymore. She began to withdraw socially. And there was just that complete change of being outgoing and funny to being more serious and just obsessed with her employment.
- Q. Could you describe what you mean by Ms. XXX being obsessed with her employment?
- A. That's all she wanted to talk about was what was going on with the Post Office, just what was happening at work and what they were doing to her.
- Q. Did you have occasion to observe whether this obsession impacted in Ms. XXX's socialization with others?
- A. Yes. Like I said, she was no longer -- she no longer looked to go to social events. She no longer hosted the green chile party. That has not happened since 2005. Before 2005, during the summer, she would go fishing every single weekend every chance that she had. After 2005 -- I think the summer of 2005, the fishing trips dwindled and -- down to maybe once a month, and last summer Ms. XXX and I took no fishing trips at all.

Q. What, if any, changes did you observe in Ms. XXX with respect to her affinity for or engaging in her artwork after 2005?

A. After 2005, her artwork became -- it was kind of like it was an obligation. It was just one more thing that she had to do. She was no longer eager to spend time at her art studio. It was more something that she just -- I know that she was getting ready for some art shows and it was like she had to -- she had to get her art pieces together rather than going and being excited about getting stuff together for her art shows, it was more of just another obligation that she had.

Q. And how does that compare to Ms. XXX's attitude to her art prior to 2005?

A. Before 2005, she -- she was very excited about it. I would call her on the phone, and when I didn't get an answer, I knew that she was at her art studio, working on her art. She was very excited about it and very excited about being in art shows and showing off her artwork, and she was just very, very excited.

The following is a great question to ask lay witnesses. The answer, contrasted especially with the witness' description of "Ms. XXX" prior to 2005, is striking:

Q. What adjectives come to mind in describing Ms. XXX after the beginning of 2005?

A. She became depressed, angry, fearful, hopeless, just a general being of -- of hopelessness.

This witness was one of two of the client's close friends who testified at the hearing. The client was single, with no family nearby who were in frequent contact with her. Therefore, in this case, the close friends were the individuals who were most familiar with the client's personality, behaviors, hobbies, etc. The defendant never deposed these lay witnesses. Therefore, when they testified was the first time the defendant was hearing what they had to say about my client's emotional suffering.

The compensatory damages for emotional distress awarded by the EEOC in this case were \$95,000.

Even when your client has family who have the requisite knowledge to testify, make sure you talk with the client's friends anyway. There are things an individual may confide in friends that they won't tell family members, and vice versa. By the way, when that happens, make sure you ask your client why they shared information with a friend but not a family member. The answer may further provide support for an award of damages. Imagine a trial where this kind of testimony was elicited:

Q. Mr. YYY, please explain why you confided your suicidal thoughts to [friend], who you only spoke to once a week, but not to your mother, who you lived with and saw every day?

A. Oh my God. If I told my mother that she would just die. So I just had to keep all of this hurt and pain to myself, locked up inside at home, as much as I could, to protect my mother. I tried to be happy on the outside for her sake, while on the inside, I sometimes just wanted to die so the hurt and humiliation would go away.

Now, what trier of fact is not going to be moved by a plaintiff trying to protect their mother from all the pain and hurt they are feeling!

How do you gather information about your client from these witnesses? One way is to send a questionnaire to potential witnesses and have them fill it out and send it back to you. Rather than starting with an "interview," this questionnaire method gives the potential witness some time to reflect on the questions and answers. Then, based on the information they provide, you should interview them to further probe their responses, assess them as witnesses, and ultimately decide

interview them to further probe their responses, assess them as witnesses, and ultimately decide what information you can elicit from them.

Below are some examples of EEOC decisions awarding compensatory damages on the strength of lay witness testimony:

Utt v. U.S. Postal Service, EEOC Appeal No. 0720070001, 2009 -- \$25,000 non-pecuniary, compensatory damages awarded. Seems to not to be based on medical evidence.

“After a careful review of the record, considering the nature of the discriminatory actions and the nature of the harm to complainant, we find the award of \$25,000.00 in non-pecuniary compensatory damages by the AJ was appropriate. We note that complainant testified that as a result of the termination he suffered from stress, low self-esteem, difficulty sleeping and gained 15 pounds. Complainant also testified that he curtailed his recreational activities such as, playing basketball, fishing and driving his recreational vehicles. Complainant avers that as a result of the financial troubles stemming from his termination, he had to sell some personal property: his 1985 Blazer for about \$1,100.00 and his four-wheel recreational vehicle, a Yamaha Blaster, for \$1,500.00. Complainant states that he also borrowed \$3,000.00 from his aunt and between \$5,000.00 and \$8,000.00 from his 76-year-old mother. Moreover, the record reveals that following his termination, complainant spent considerable time trying to secure another job. A year after the termination, complainant obtained a new job at the Department of Veterans Affairs.”

Bartron Dep't of Defense, EEOC Appeal No. 0720100054, 2011 -- \$92,500 non-pecuniary, compensatory damages awarded.

Complainant testified credibly as to the causal link between the Agency's discrimination and her resultant emotional harm as well as the details of her emotional pain and suffering, inconvenience (in this case, severe financial hardship), mental anguish, loss of enjoyment of life, injury to professional standing, and injury to her credit standing. Complainant's testimony further demonstrates that she experienced outward manifestations of her emotional distress, including depression, family strain, humiliation, and loss of self-esteem.

Bad Heart Bull v. Dep't of Health and Human Services, EEOC Appeal No. 01A12574, 2002 -- \$40,000 non-pecuniary, compensatory damages awarded.

The agency's position that complainant failed to provide corroboration of her claim that her emotional distress was caused by the agency's discriminatory actions is not well-taken. As the agency itself notes in its response to complainant's appeal, a complainant's

own testimony is sufficient to establish the existence of non-pecuniary losses, as well as the severity and duration of those losses. See *James v. United States Postal Service*, EEOC Appeal No. 01944466 (October 5, 1994). Furthermore, complainant did provide corroboration of her statement that her emotional harm was a result of the agency's discrimination. CW stated that she observed that since the downgrade, complainant showed signs of depression and had lost a significant amount of weight and noted that she felt that complainant's poor health was directly related to complainant's feelings of ineffectiveness in her current assignment.

The agency's reliance on its determination that, because complainant did not seek medical treatment her emotional distress was not severe is also misplaced. Complainant provided evidence in the form of her own statement and the statements of CW and CW2 which establishes that for a period of 2 1/2 years she experienced a variety of emotional problems due to the agency's discrimination. CW and CW2 both stated that complainant's visible distress caused them to urge her to seek professional counseling and/or medical help. Furthermore, complainant stated that she did seek help in stabilizing her mental health from a traditional healer, from whom she received treatment for a period of several months.

When planning your litigation strategy, do not just concentrate on liability, you should also start thinking about how you are going to prove damages. Ask your client who would be familiar with the adverse effects of the discrimination and start amassing the information necessary to support the damages claims. You are likely going to need that information for discovery responses anyway. Additionally, this information may be of great help in evaluating your case for settlement purposes. Lastly, the information you gather will be the road map for testimony at the trial.

Dickens closes out his *A Tale of Two Cities* with this memorable line, "It is a far, far better thing that I do, than I have ever done; it is a far, far better rest that I go to than I have ever known." Hopefully, by effectively using lay witnesses to paint two pictures of your client -- your client before the defendant's bad acts and your client after the defendant's bad acts -- your

achievements in recovering compensatory damages for emotional distress will be “far far better”
than what you would achieve without such testimony.

**TESTIMONY EXCERPT:
(THE PLAINTIFF'S SON)**

1 BY MR. KAPLAN:

2 Q Mr. QQQ, please state your full name for the
3 record, spelling your first name please?

4 A ____ QQQ,

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Q And what is your relationship to the Complainant,
13 [REDACTED] QQQ?

14 A I'm her son.

15 Q Mr. QQQ, I want to draw your attention to events of
16 December 6, 2002, and can you describe what, if anything,
17 occurred in terms of your interactions with your mother on
18 that day?

19 A On that day I picked my mother up from work and she
20 had received a performance evaluation. She was very, she was
21 very upset about it, and she was, she was crying. She said
22 like I can't believe I got this. I don't know what else was
23 expected of me. I did all I could.

24 Q To what extent, if any, was this the first
25 indication that you had that your mother was having some

1 difficulty at work?

2 A That's the first time that I recall because I was
3 pretty stressed out that day. It was the day before my LSAT
4 exam, and she -- I didn't expect that, and she just -- she
5 was crying and upset and that upset me also.

6 Q Now I want to focus on two periods of time, and the
7 periods of time are your relationship with your mother before
8 March of 2003 and your relationship with your mother after
9 2003. Focusing in general on the years up to March of 2003,
10 can you basically describe with your typical relationship
11 with your mother was?

12 A We were very close. We talk all the time.
13 She'd -- if I needed anything, she'd always be there for me.
14 She always, she always told me to do the right thing and
15 stand up for what I believed in. She was like my motivator.
16 Anything I needed, she was there. She was always upbeat and
17 she was like every time -- she always had a smile on her face
18 anytime I saw her.

19 Q And to what extent, if any, did that interaction
20 with your mother that you've just described, change after
21 March of 2003?

22 A After that, she's, she's always been down and she's
23 emotional. She cries very easily. Before she was in -- she
24 hardly ever -- I don't remember the last time she cried, like
25 before the whole -- all this incident began. She -- after

1 she, she stopped like participating in anything like her
2 hobbies, she avoided her friends. She -- I remember we went
3 to a wedding in Chicago, and she avoided -- she wanted to
4 like stay in the hotel room instead of attending like the
5 premarital ceremonies and stuff. She, she was like
6 embarrassed. She didn't want to have small talk with people
7 because she was worried someone would just say like how's
8 work going. She was very down all the time after.

9 Q How do you know that the reason she avoided small
10 talk was not having to face the question of someone asking
11 her about work?

12 A Because anytime that subject came up, she'd get
13 pretty emotional about it. It was hard for her to talk about
14 it.

15 Q You, you testified that your mom was your motivator
16 before, before March of '03. Can you tell us what that
17 means?

18 A She would -- anything I needed -- if I -- I could
19 just call her and she'd be there for me. If I had a question
20 about school, about like advice for work or anything, but
21 after -- like whenever I'd call home or like from work or
22 something, she would say, like she'd just talk to me for a
23 minute and then she'd like give the phone to my father. She
24 like passed it along. She, she doesn't like to interact as
25 much as she would before.

1 Q I want to make sure we have an understanding. When
2 you talk about when you call and she passes -- she talks for
3 a minute and then passes off the phone to your father, are
4 you describing her interaction before March of 2003 or after
5 March of 2003?

6 A After. She used to -- whenever I would call home,
7 she'd talk for -- she wouldn't let me off the phone before.
8 She'd just talk and talk and so it's pretty weird that she's
9 just like talk to your dad.

10 Q One of the words that you mentioned were -- in
11 terms of changes in your mom were hobbies. Before March of
12 2003, what hobbies did you observe your mother doing?

13 A She used, she used to love to play with the dog.
14 She used to like to work in the yard. Gardening. She always
15 had like houseplants and now they're all dead, but then
16 before she also loved to cook. She made different things for
17 us and cooking might not seem that important, but my father's
18 a diabetic, and he has a very strict diet. She had him --
19 she had like his sugar kind of under control. She used to
20 watch the show, Dr. Mirkin, and she'd get advice from there
21 and she'd make these meals for us that were like healthy and
22 like appropriate for my father, and then like neither of us
23 are good cooks, and --

24 Q Neither of who?

25 A Myself or my father, and also like she'd be there

1 for my father to do that stuff because he kind of strays --
2 he's not very good with a strict diet.

3 Q And how, if at all, has that changed after March of
4 2003?

5 A She hardly ever makes anything or she'll just rush
6 and like -- it doesn't taste the same. It doesn't -- if she
7 does make something, she just, she just -- she'll just say
8 order out or one of you guys just make something easy like
9 make a sandwich or -- so we basically just eat microwavable
10 food or something like quick.

11 Q You mentioned gardening. Can you describe what
12 your -- what you observed was your mother's interest in
13 gardening before March of 2003?

14 A She had a garden in her back yard. She'd plant
15 different vegetables and stuff, different flowers. I'm not
16 sure exactly what type of flowers or vegetables, I know she
17 liked working in there and planting stuff and she had plants
18 inside the house also, and after, after this, she basically
19 neglected it, and it's like she forgot to water anything
20 and --

21 Q Following March of 2003, with respect to the
22 outdoor garden, how would you describe the change, if at all,
23 in your mother's attention to that?

24 A She, she didn't plant anything or she didn't do
25 anything as she did in previous years. She would also

1 like -- they'd go to the temple like almost every weekend,
2 maybe at least every other weekend. They're pretty active in
3 their religious beliefs and activities.

4 Q Did you observe a change in that?

5 A I don't remember the last time they've gone. I
6 guess that might be because they might bump into friends
7 there, and she's embarrassed and she doesn't want to face
8 anyone.

9 Q Has your mother let you know that she's embarrassed
10 because of what happened to her?

11 A She, she -- I can tell by her demeanor and like
12 just -- she avoids talking about it or actually like even if
13 I talk to her, and I don't want to see her upset, so I try to
14 avoid the subject also. But I can see that she's
15 embarrassed. It just like hurts her to talk about it or you
16 can tell by her expressions.

17 Q Before March of 2003, you know, the several years
18 before that, did you have the opportunity to observe the kind
19 of frequency with which your mother or your parents would
20 socialize with friends?

21 A Fairly often. For instance, like the temple,
22 they'd always go to the temple like almost every weekend.
23 They'd stay there almost all day every Sunday or sometimes
24 they'd miss it here and there, but they'd always have people
25 over or go to other people's houses or parties or -- they

1 were pretty social.

2 Q And to what extent, if any, did that degree of
3 socialization change after March of 2003?

4 A My mother's very withdrawn now and she doesn't --
5 she don't like going anywhere. She's just like staying in.
6 She doesn't really do anything it seems like. She used to
7 love to write. She doesn't do that anymore. She --

8 Q What do you mean by she used to love to write?

9 A She wanted to write like books and she just --
10 she'd always be writing something. I don't see her doing
11 that anymore.

12 Q Are you currently living at the same residence as
13 your mother?

14 A I have an apartment but I'm back and forth
15 between --

16 Q How -- I'm sorry, I didn't mean to cut you off.

17 A I'm back and forth between home and -- home and
18 here. It varies on the degree that I'm home. Maybe sometimes
19 I stay the whole week, but if I have to work late or -- then
20 I'll stay here.

21 Q About how often since March of 2003, on a weekly
22 basis if you can describe it that way or however you can
23 describe it, how often do you see your mother physically?

24 A It's at least four times a week at least.

25 Q I think you mentioned one of the -- you described

1 it as a hobby, playing with the dog. What was your mother's
2 interaction -- what kind of dog is it?

3 A It's a terrier.

4 Q What kind of interaction was there between the
5 mother and your dog prior to March 2003?

6 A The dog's mostly attached to her, and he always
7 goes to her and she would like walk him and she would -- I
8 guess for exercise and she'd -- that's another thing she
9 stopped doing. She stopped exercising. We have a treadmill
10 at home.

11 Q Let's stick with the dog.

12 A I'm sorry. She, she would walk with him. She'd
13 play with him a lot, like fetch or she'd throw -- we have
14 like this little football thing that she throws and he'll go
15 and get it and bring it back, and he's like anytime she's
16 there, he would just jump all over and be very excited. They
17 say like dogs take the personality of their owners and you
18 can kind of see it on him also. I know it sounds kind of
19 funny but --

20 Q How, if at all, has your mother's interaction with
21 the dog changed?

22 A She basically ignores him. She just says, Buster,
23 go away, and just -- I don't know. She basically ignores him
24 and he like goes and sits in a corner and I feel bad for him.

25 Q Let me take a wild guess, the dog's name is Buster.

1 A Yes.

2 Q You began to mention that your mother stopped
3 exercising, something about the treadmill. Can you explain
4 that?

5 A Like before she was kind of like on this health
6 kick with my father, and she was trying to get me to start
7 eating right at an early age, and she, she wanted to have him
8 and her also exercise, and she started like this routine.
9 She would walk on the treadmill everyday or at least walk the
10 dog or do something to like -- for exercise, and right now
11 the treadmill is very dusty, like she doesn't walk the dog.
12 She doesn't -- it looks like -- I don't want to be mean --
13 she gained weight and she's just not the same.

14 Q Mr. QQQ, how, if at all, has your relationship with
15 your mother changed since the -- let me rephrase it. How, if
16 at all, has your mother's relationship with you changed since
17 March of 2003?

18 A She -- before -- as I said, she's not as upbeat.
19 She doesn't, she doesn't try to make an effort to interact
20 with me, and she's very emotional. So like I try and
21 avoid -- like I don't like seeing her like that. So I don't,
22 I don't like -- I try and avoid interaction with her, but
23 like I want to be there to support her at the same time. So
24 I -- we're not as close as we used to be basically.

25 Q Based on the amount of time that you're at home

1 now, there are times when you're there overnight. Is that
2 what I understand?

3 A Yes.

4 Q Have you noticed any changes in your mother's
5 sleeping habits or sleeping patterns as compared to what it
6 was before March 2003?

7 A She has sleeplessness. She --

8 Q I'm sorry.

9 A She has sleeplessness. She'll get up like
10 frequently and she didn't do that before. She slept pretty
11 well and during the day she always looks tired. I know about
12 the sleeplessness because I'm basically a night owl. I stay
13 up pretty late, and she'll get up randomly in the middle of
14 the night and she -- I mean that's normal for every once in a
15 while, but it's more frequent than she used to.

16 Q Mr. QQQ, have you had an opportunity to observe
17 your mother's relationship with your father?

18 A Yes.

19 Q How would you describe what that relationship was
20 like prior to March of 2003?

21 A They were very social. Like liked going to the
22 temple every weekend. They liked going to parties and they,
23 they seemed more happy. My mom gets easily agitated now.
24 She's so much more emotional and it seems like to put a
25 strain on their relationship.

1 Q Prior to March of 2003, how would you describe
2 their interactions with each other.

3 A They were very friendly. I mean they'd fight every
4 once in a while like any married couple, but not -- my mom,
5 she gets very agitated for like silly things and she used to
6 be very -- not -- she wasn't short tempered before. She's
7 very snappy now and she'll cry very easily. And that's
8 what's changed that I can think of.

9 Q Your mother's temperament, attitude, behavior,
10 whatnot that you've been describing from March 2003 forward,
11 did you observe any of that in the time period of the end of
12 1998 to the beginning of 1999?

13 A No.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
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